THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NOs. 8802 and 8909 of 1999

Between;

N.Satyanarayana Reddy and another

...Petitioners
(in W.P.No.8802 of 1999)

K.Nagendra Rao and another

...Petitioners
(in W.P.No.8909 of 1999)

Vs.

Government of A.P. rep. by its Principal Secretary, Municipal Administration and Urban Development, Secretariat, Hyderabad and another

...Respondents
(in both writ petitions)

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NOs. 8802 and 8909 of 1999

COMMON ORDER:

The two writ petitions involve similar issues of law and fact and therefore are heard and disposed of by this common order.

The petitioners assail the 1st respondent's memo No.8236/Elections-II/96-27, dated 20.04.1999 which reads as under:

> *In the Government Memo, first cited, the Collector, Ranga Reddy District was informed that the Government have decided to include the Gaddiannaram Grampanchayat into the limits of Municipal Corporation of Hyderabad and was requested to take action to cancel the notification under clause (f) of Sub Section (2) of Section 3 of the Andhra Pradesh Panchayat Raj Act, 1994 in respect of Gaddiannaram Grampanchayat and denotify the same under the Andhra Pradesh Panchayats (Declaration of Villages) Rules,1994 issued in G.O.Ms.No.515 Panchayat Raj & Rural Development Department, dated 17.08.1994.*
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> *2. The Collector, Ranga Reddy District in her letter third cited, informed that the Gramsabha of*

Gaddiannaram Grampanchayat did not agree for inclusion of the Grampanchayat into the Municipal Corporation of Hyderabad. The Gramsabha desired that a separate Municipality may be provided for Gaddiannaram.

3. The decision of the Gramsabha has been considered. The Gaddiannaram Grampanchayat abutting the Municipal Corporation of Hyderabad is growing rapidly and is unable to meet the urban needs of its people. It is felt necessary that a higher level of administrative machinery be made available to manage its affairs. It is also proposed to take up the development of undeveloped areas of the Grampanchayat. The industrial pollution, developmental control and unauthorised constructions need be checked. Further, the water supply and sewerage works in the Grampanchayat require upgradation by a specialist organization like Hyderabad Metro Water Supply & Sewerage Board. As such, the decision of the Grampanchayat do not deserve any consideration.

4. Government after careful consideration, have decided to alter the limits of Municipal Corporation of Hyderabad by including the 9 surrounding municipalities and Gaddiannaram Grampanchayat which are contiguous to Municipal Corporation of Hyderabad.

5. The Collector, Ranga Reddy District, Hyderabad is therefore requested to take action to denotify the Gaddiannaram Grampanchayat under Andhra Pradesh Panchayat (Declaration of Villages) Rules, 1994 issued in G.O.Ms.No.515 Panchayat Raj & Rural Development Department, dated 17.08.1994.

6. The Collector, Ranga Reddy District is requested to issue a notification on 21st April, 1999 and ensure that the Notification be published as per rules on that date."

At the hearing of the writ petitions, the petitioners, residents of Gaddiannaram Grampanchayat, challenge the

impugned memo issued by the State Government on the singular ground that the State Government's order amounts to usurpation of the statutory authority and jurisdiction of the 2nd respondent and constitutes a dictation by the State Government to a statutory authority as to the performance of his statutory functions.

The 4th respondent-Grampanchayat was constituted in 1979 under the provisions of the A.P.Grampanchayat Act,1964. The A.P. Panchayatraj Act,1994 (for short "the Act") repealed and substituted the earlier enactment. Sec.3 of the Act (as it stood at the relevant time—i.e., the issuance of the impugned memo by the State Government) empowers the Commissioner to declare any revenue village or part of Mandal for the purposes of the Act and authorizes the Commissioner to increase or reduce the local area of the village or to alter the boundary of any village.

Sec.3 (2)(f) of the Act authorizes the Commissioner to cancel a notification issued under sub-section1. By the amendments incorporated by Act 22/2002, with effect from 20-06-2002, the power under Sec.3 (hitherto exercisable by the Commissioner) is conferred on the Government. As on the date of issuance of impugned memo by the State Government, however, the competent authority to declare a village for the purposes of the Act under Sec. 3(1) or to cancel a notification issued under sub-section.1[Sec.3(2)(f)] was the Commissioner who is defined under Sec.2(8) to be any Officer who is authorized by the Government to exercise any of the powers or discharge any of the duties of the Commissioner under the Act.

It is common ground between the parties in these writ

petitions that the 2nd respondent is the authorized officer to exercise the powers of the Commissioner under Sec.3 of the Act.

The State Government issued rules under Sec.3 of the Act in G.O.Ms.No.515, dated.17-08-1994 known as the A.P. Grampanchayats (declaration of villages) Rules,1994 (for short " the 1994 Rules"), which enumerate the guidelines for bifurcation of Grampanchayats.

The 2nd respondent in exercise of powers under Sec.3(2)(f) of the Act read with the 1994 Rules, issued a show-cause notice dated.22-12-1998 to the 4th respondent intimating the proposal to de-notify certain Grampanchayats including the 4th respondent-Grampanchayat. On the admitted factual scenario the 4th respondent had submitted objections to the proposals for its de-notification. The 2nd respondent did not thereafter take any final decision on the matter.

Even before the 2nd respondent considered the objections of the 4th respondent, exercised his statutory discretion and passed a final order either canceling the notification constituting the 4th respondent as a Grampanchayat, (exercising powers under Sec.3(2)(f) of the Act) or dropping the proposals to de-notify the 4th respondent-Gramapanchayat, the State Government issued the impugned memo.

On a true and fair construction of the impugned Government memo, it is clear that the Government itself considered the resolution of the 4th respondent – Gram panchayat (objecting to its de-notification) and in usurpation of the statutory discretion of the

2nd respondent had decided to extinguish the *persona juris* of the 4th respondent – Gram panchayat by cancelling its notification as such and including within the Municipal Corporation of Hyderabad. Having recorded such a decision, in clear and unequivocal terms in the impugned memo, the State Government directed the 2nd respondent to perform a mere ritual of exercise of statutory power under Sec.3(2)(f) of the Act by issuing an order of de-notification and specifying a date for issuance of such a notification (21-04-1999).

The petitioners argue that the impugned memo is not in the nature of mere communication to the 2nd respondent intimating the said respondent to broad policy objectives of the State Government. A contention that in fact and reality. The memo constitutes a decision by the State Government to de-notify the 4th respondent – Gram panchayat in clear usurpation of the statutory power, authority and jurisdiction of the 2nd respondent and that memo constitutes a wholly illegal exercise of power. According to the petitioners the memo does not even direct the State Government to take an appropriate decision in the light of the policy objectives of the State. The decision itself has been recorded by the State Government in the memo and the 2nd respondent-the District Collector is directed to merely execute a ritualistic exercise of statutory power, thus reducing the 2nd respondent's statutory authority to a clerical function. The petitioners plead other facts and circumstances, which in their contention rendered the decision to de-notify the 4th respondent – Gram panchayat irrational. But at the hearing of the writ petition these issues were presented for consideration by this Court and challenge to the impugned

memo is confined only to the jurisdictional incompetence of the State Government, as set out above.

Defending the impugned memo the learned Government pleader, appearing on behalf of the State Government, contended that the orders of the State Government are valid and competent. Reliance is placed on the judgment of a learned single Judge of this Court in ***K.Sankara Reddy and others Vs. The Government of Andhra Pradesh and others***([1])

In ***K.Sankara Reddy's case***(1st supra) the facts were: the Tirupati Municipality by a resolution dated.24-01-1987 requested the State Government to include three Gram Panchayats in it. The Collector initiated proceedings proposing cancellation of the notification constituting the Gram panchayats and by proceedings dated.03-02-1987 called for objections to the proposal. The concerned Gram Panchayats convened a meeting and passed a resolution opposing from de-notification. Even before a final decision was taken by the Collector, the State Government issued an order dated.21-04-1987 declared its intention to include the three Grama pacnahyats into the Tirupati Municipality and inviting objections against the said proposals from the residents of the local area and the tax payers of the municipality. This Government's order was challenged by the Sarpanchas of the three Gram Panchayats. Distinguishing two earlier judgments of this Court, a Division Bench judgment in ***K.Nagabhushanam Vs. Collector, Krishna District***([2]) and of a learned single Judge in ***Rajahmundry Mandal Praja Parishad Vs. Government of Andhra Pradesh***([3]) a learned single Judge in ***K.Sankara Reddy's*** case(1st supra) held that as the impugned Government's

order was merely a preliminary notification under the Municipalities Act expressing an intention to include three Grama panchayats within the limits of the Municipality and calling for objections if the said proposal from the residents of the Municipality, such as order was not incompetent, the learned judge pointed out that the Government is however incompetent to issue a final notification under Sec.3(3) of the Municipalities Act including Gram panchayats within the limits of a Municipality prior to notification of a decision of the Commissioner/Collector under the Gram panchayats Act canceling earlier notification constituting the Gram panchayats.

The decision in ***K.Sankara Reddy***'s case (1st supra), in the considered view of this Court affords no assistance to the State Government nor does the principle spelt out therein justify the memo impugned in this writ petition. What is challenged is not a decision of the State Government tentatively proposing inclusion of the 4th respondent- Gram panchayat in the Hyderabad Municipal Corporation after a preliminary notification by the 2nd respondent to de-notify the said Gram panchayat. As already stated herein above, the impugned memo is a decision by the State Government overruling the objections put forth by the 4th respondent- Gram panchayat to its de-notification, recording a conclusion that the Gram panchayat should be de-notified and directing the 2nd respondent-statutory authority—the District Collector to execute a mere ritual of issuing the de-notification order and on a specified date. Clearly the order of the State Government constitutes an indisputably naked and incompetent usurpation of the statutory authority and discretion of the 2nd respondent and in transgression of the provisions of the

Sec.3(2)(f) of the Act. The impugned memo is in purported exercise of the executive power of the State Government under Article 162 of the Constitution. It is axiomatic that the executive power of the State is subordinate and must confirm to its legislative power. The Andhra Pradesh Panchayatraj Act,1994 is an exercise of the legislative power of the State. Sec.3 of the Act consecrates the power, authority, jurisdiction and discretion to cancel a notification constituting a Gram panchayat, to the Commissioner/District Collector. Resultantly the executive power of the State is *protanto* excluded. It is that authority which is consecrated the statutory power and discretion that is required to exercise the power and the discretion. Any order passed by the State Government in the context of the above legal architecture, deciding to de-notify a Gram panchayat is an exercise that is incompetent and *ultra vires* Sec.3 of the Act.

For the afore said reasons Memo No.8236/Elections-II/96-27 dated.20-04-1999 is declared illegal, invalid, incompetent and inoperative. The writ petitions are allowed with costs of Rs.1000/- (Rupees One Thousand only) in each of the writ petitions payable by the State Government to the petitioners within a period of eight (8) weeks from the date of receipt of a copy of this Order.

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GODA RAGHURAM,J

__ July 2006
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[1] 1991(2) An.W.R 173

[2] AIR 1982 A.P. 123

[3] 1988(1)APLJ 338